

MARITIME CLAIMS AND LITIGATION (KNOCK-FOR-KNOCK AGREEMENT)

*Agreement signed at Canberra March 8, 1945, with exchange of notes
Entered into force March 8, 1945
Terminated September 18, 1946*¹

59 Stat. 1499; Executive Agreement Series 467

AGREEMENT BETWEEN THE GOVERNMENTS OF THE COMMONWEALTH OF AUSTRALIA AND THE UNITED STATES OF AMERICA

The Government of the Commonwealth of Australia and the Government of the United States of America being desirous of defining, in so far as certain problems of marine transportation and litigation are concerned, the manner in which shall be provided mutual aid in the conduct of the war including the aid contemplated by the Exchange of Notes between the Australian Minister at Washington and the United States of America, Secretary of State, on the 3rd September, 1942,² have agreed as follows:

ARTICLE I

(1) Each contracting Government agrees to waive all claims arising out of or in connection with negligent navigation or general average in respect of any cargo or freight owned by such Government and in respect of any vessel (including naval vessel) owned by such Government against the other contracting Government or any cargo, freight or vessel (including naval vessel) owned by such other Government or against any servant or agent of such other Government or in any case where such other Government represents that such claim if made would ultimately be borne by such other Government.

(2) Each contracting Government agrees on behalf of itself and of any organisation which is owned or controlled by it and operating for its account or on its behalf to waive all claims for salvage services against the other contracting Government or against any cargo, freight or vessel (including naval vessel) owned by such other Government or in any case where such other

¹ Pursuant to notice of termination given by Australia Mar. 18, 1946.

² EAS 271, *ante*, p. 146.

Government represents that such salvage claim if made would ultimately be borne by such other Government.

(3) Each contracting Government agrees to waive all claims for loss of or damage to cargo owned by such Government and arising out of the carriage thereof or for loss of or damage to any cargo or vessel owned by one contracting Government and caused by the shipment or carriage of cargo owned by the other contracting Government against such other Government or against any servant or agent of such other Government or against any vessel (including naval vessel) owned by such other Government or in any cases where such other Government represents that the claim if made would ultimately be borne by such other Government.

(4) Each contracting Government undertakes not to make any claim in respect of any vessel or cargo insured by it to which it may be entitled by virtue of any right of subrogation either—

- (a) directly against the other contracting Government; or
- (b) in any case where such other Government represents that such claim if made would ultimately be borne by such other Government.

(5) Each contracting Government agrees to extend the principles of this Agreement to such other maritime claims as may from time to time be agreed between them.

ARTICLE II

Where in any case claims arise which are not required to be waived by this Agreement in addition to or in conjunction with claims which are so required to be waived and it is necessary in any proceedings including proceedings for the limitation of liability that claims be marshalled or for the proper assessment of any salvage or general average that values should be estimated, the provisions of this Agreement shall not apply but claims which would otherwise be required to be waived under this Agreement shall be asserted. Any recoveries, however, shall be waived by the Government entitled to such recoveries as against the other or by mutual arrangements between the two Governments shall be dealt with in such other way as will give effect to the purposes of this Agreement.

ARTICLE III

(1) For the purpose of this agreement the expression "vessel owned by a contracting Government" includes a vessel on bare boat charter to a contracting Government or requisitioned by a contracting Government on bare boat terms or otherwise in the possession of a contracting Government (except to the extent that the risk of loss or liability is borne by some person other than either contracting Government).

(2) In order to carry out the full intention of the provisions of Article 1

of this Agreement each contracting Government will so arrange in connection with bare boat charters to it that the owners or persons interested through such owners shall not have or assert any claims of the character specified in Article 1.

ARTICLE IV³

Each contracting Government upon the request of the other will provide undertakings for the release of vessels or cargo owned by the other contracting Government from judicial proceedings in Courts in the United States of America or in the Commonwealth of Australia as the case may be where such release will promote the war effort and the requesting Government so represents, upon compliance with the following conditions:

(a) upon the tender of such request due authority will be conferred by the Government interested in such vessel or cargo upon the law officers of the Government furnishing the undertaking to appear on their behalf and to conduct the defence of such proceedings in so far as such vessel or cargo is concerned, to settle or compromise any such suit, to assert or settle and compromise any claim to which the requesting Government may be entitled in respect of the subject matter of the suit and to make and receive payments in respect thereof; and

(b) the requesting Government upon tendering such a request will assure the other Government of its full co-operation in making defence to such suit and asserting such claims including the making available of witnesses and evidence and including preparation for trial.

Unless otherwise agreed, each contracting Government will reimburse or account to the other for any payment made or received by the one Government on behalf of the other.

ARTICLE V

Nothing in this Agreement shall be construed as a waiver of the right of either contracting Government in appropriate cases to assert sovereign immunity.

ARTICLE VI

(1) This Agreement, which shall come into force on the date of signature, shall apply in respect of all claims arising before the date of this Agreement but remaining unsettled at such date or which may arise during the currency of this Agreement.

(2) This Agreement shall remain in force until the expiration of six

³ For an exchange of notes regarding art. IV, see p. 162.

months from the date upon which either of the contracting Governments shall have given notice in writing of their intention to terminate it.

IN WITNESS whereof the undersigned, duly authorized to that effect by their respective Governments, have signed the present Agreement and have affixed thereto their seals.

DONE in Canberra in duplicate, this 8th day of *March, 1945*.

Signed on behalf of the Government of the United States of America.

NELSON TRUSLER JOHNSON [SEAL]

Signed on behalf of the Government of the Commonwealth of Australia.

H. V. EVATT [SEAL]

EXCHANGE OF NOTES

The American Minister to the Minister for External Affairs

LEGATION OF THE
UNITED STATES OF AMERICA
Canberra, Australia,
March 8, 1945.

SIR:

With reference to Article IV of the agreement signed today between the Government of the Commonwealth of Australia and the Government of the United States of America relating to certain problems of maritime transportation and litigation, I have the honor to state that for the present and until further notice it is the intention of my Government that the accounting contemplated by that Article will be accomplished under the Act of Congress of March 11, 1941,⁴ to the extent authorized under that Act.

Accordingly, the Government of the United States will in appropriate cases make such payments as are necessary in the course of operations under the agreement according to its procedure in the administration of that Act and will receive any moneys which may accrue in the course of such operations as a benefit under that Act and under the Exchange of Notes between the Australian Minister at Washington and the United States of America Secretary of State on the 3rd September, 1942.

Accept, Sir, the renewed assurances of my highest consideration.

NELSON TRUSLER JOHNSON
American Minister

The Right Honorable
HERBERT VERE EVATT,
Minister for External Affairs,
Canberra, A.C.T.

⁴ 55 Stat. 31.

The Minister for External Affairs to the American Minister

MINISTER OF EXTERNAL AFFAIRS,
CANBERRA.

8th March, 1945.

SIR,

I have the honour to acknowledge receipt of your note of today's date referring to Article IV of the Agreement signed today between our two Governments relating to certain problems of marine transportation and litigation. In reply I wish to state that for the present and until further notice my Government intends that the accounting required by Article IV shall be on the same basis as the payments contemplated in your note and that the Government of the Commonwealth of Australia will make any payments required by the Agreement and receive any moneys accruing under it as reciprocal aid according to the terms of the Exchange of Notes between the Australian Minister at Washington and the Secretary of State of the United States of America on the 3rd September, 1942.

I have the honour to be,

With the highest consideration, Sir,

Your obedient servant,

H. V. EVATT
(*Minister of State*)

The Honourable

NELSON TRUSLER JOHNSON,

*Envoy Extraordinary and Minister Plenipotentiary
of the United States of America,
American Legation,
Canberra. A.C.T.*